

Centers for Medicare & Medicaid Services, HHS

§ 405.857

to a revised determination when the amount in controversy is \$100 or more.

[32 FR 18028, Dec. 16, 1967, as amended at 39 FR 12098, Apr. 3, 1974. Redesignated at 42 FR 52826, Sept. 30, 1977; 62 FR 25855, May 12, 1997]

§ 405.850 Change of ruling or legal precedent.

Change of a legal interpretation or administrative ruling upon which a determination or decision was made shall not be considered as good and sufficient reason for reopening the determination or decision.

§ 405.853 Expedited appeals process.

(a) *Conditions for use of expedited appeals process (EAP).* A party may use the EAP set forth in § 405.718 of this chapter to request court review in place of the ALJ hearing or Departmental Appeals Board (DAB) review if the following conditions are met:

(1) The carrier hearing officer has made a decision; an ALJ has made a hearing decision; or DAB review has been requested, but a final decision has not been issued.

(2) The filing entity is a party referred to in § 405.718(d) of this chapter.

(3) The party has filed a request for an ALJ hearing in accordance with § 405.855, or DAB review in accordance with 20 CFR 404.968.

(4) The amount remaining in controversy is \$1,000 or more.

(5) If there is more than one party to the hearing decision, each party concurs, in writing, with the request for an EAP.

(b) *Content of the request for EAP.* The request for an EAP:

(1) Alleges that there are no material issues of fact in dispute; and

(2) Asserts that the only factor precluding a decision favorable to the party is a statutory provision that is unconstitutional or a regulation, national coverage decision under section 1862(a)(1) of the Act, or CMS Ruling that is invalid.

[62 FR 25854, May 12, 1997]

§ 405.855 ALJ hearing.

(a) *Right to hearing.* A party to the carrier hearing has a right to a hearing before an ALJ if—

(1) The party files a written request for an ALJ hearing within 60 days after receipt of the notice of the carrier hearing decision; and

(2) The amount remaining in controversy is \$500 or more.

(b) *Place of filing hearing request.* The request for an ALJ hearing must be made in writing and filed with the carrier that issued the decision, a Social Security office, or, in the case of a qualified railroad retirement beneficiary, an office of the Railroad Retirement Board.

(c) *Effect of ALJ hearing decision.* (1) An ALJ's decision is binding on all parties to the hearing unless—

(i) The DAB reviews the ALJ decision;

(ii) The DAB does not review the ALJ decision, and the party requests judicial review;

(iii) The decision is revised by the DAB or an ALJ in accordance with the provisions of § 405.750 of this chapter; or

(iv) The expedited appeals process is used.

[62 FR 25854, May 12, 1997]

§ 405.856 Departmental Appeals Board (DAB) review.

Regulations beginning at 20 CFR 404.967 regarding SSA Appeals Council Review are applicable to DAB review of matters addressed by this subpart.

[62 FR 25854, May 12, 1997]

§ 405.857 Court review.

(a) *General rule.* To the extent authorized by sections 1869, 1876(c)(5)(B), and 1879(d) of the Act, a party to a DAB decision, or an ALJ decision if the DAB does not review the ALJ's decision, may obtain a court review if the amount remaining in controversy is \$1,000 or more. A party may obtain court review by filing a civil action in a district court of the United States in accordance with the provisions of section 205(g) of the Act. The filing procedure is set forth in 20 CFR 422.210.

(b) *Prohibition against court review of certain Part B regulations or instructions.* Under section 1869(b)(4) of the Act, a court may not review a regulation or instruction that relates to a method of payment under Part B if the regulation